

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MISSOURI**

**TUMEY L.L.P.  
and  
TOD T. TUMEY**

Plaintiffs,

vs.

**MYCROFT AI INC.,  
JOSHUA MONTGOMERY,  
and MICHAEL LEWIS**

Defendants.

**Case No. 4:21-cv-00113**

**PLAINTIFFS' EMERGENCY MOTION AND SUGGESTIONS  
TO TEMPORARILY STAY EXPERT DISCOVERY**

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TUMEY L.L.P. AND TOD T. TUMEY

Plaintiffs respectfully request that the Court temporarily stay all expert discovery in this case. Defendants have recently identified their intended Expert, however, this individual had previously been considered as a potential expert by Plaintiffs and, after the Expert advised that he had no conflict in the case, was provided substantive confidential information regarding Plaintiffs' evidence and case strategy. Plaintiffs request that this stay include a temporary suspension of all expert discovery and deadlines contained in the Scheduling and Trial Order (Dkt. No. 63) to provide Plaintiffs a brief period of time to submit a Motion to Disqualify Defendants' Expert and have the Court rule thereon.

### BACKGROUND

The Defendants recently submitted their expert designation of Mark Lanterman on January 24, 2022 according to the Court's Scheduling Order (Dkt. No. 121) deadline. During the course of this case, Plaintiffs had switched their lead counsel (Dkt. Nos. 102 & 103) to an attorney at Plaintiff Tumey L.L.P., David Wooten, in order to provide continuity to its litigation team across the multiple ongoing litigations between the Parties (or related parties) including cases 4:20-cv-00111-RK and 4:20-cv-00662-RK currently stayed in this Court, as well as the Hawaiian lawsuit filed by Defendant Montgomery against the Plaintiffs and a witness in the present case. Prior to the change in lead counsel, Mr. Lanterman had been contacted by Plaintiffs' original Lead Counsel regarding his availability as an expert witness. Mr. Lanterman subsequently informed Plaintiffs' Counsel at Berkowitz Oliver LLP that he was clear of any conflicts and entered into substantive discussions regarding the Plaintiffs' case, including concerning potential evidence and litigation strategies. Gilman Decl. (attached hereto as Exhibit 1) at 2-3. Mr. Lanterman also provided Plaintiffs with an engagement letter, after discussions with Plaintiffs' Counsel regarding work-product privilege as it related to the work being contemplated. *Id.* at 4.

Promptly upon becoming aware of this situation, on February 3, 2022, Plaintiffs' current Lead Counsel informed Defendants' Counsel of the conflict, and the Parties conducted a meet and confer on the afternoon of February 7, 2022 without resolution. Counsel for the Parties, conferred again on February 9, 2022, but could not agree to a scheduling change that would protect both sides interests.

### ARGUMENT

The Defendants' retention of Mr. Lanterman poses a significant conflict in this case. Mr. Lanterman and his son/assistant Joseph Lanterman talked at length about this case with Plaintiffs' previous lead counsel, Stacey Gilman and Lauren Tallent, including discussions of: (1) Plaintiffs' evidence in this case, including Plaintiffs' arguments and evidence in support thereto; (2) Mr. Lanterman's view of the evidence and potential next steps in the case; (3) Plaintiffs' discovery strategies, with Mr. Lanterman providing recommendations for third party and forensic approaches to discovery; and (4) Chilton Webb's role as Plaintiffs' expert/percipient witness, and how and why Plaintiffs might use Mr. Lanterman to supplement their evidence from him). *Id.* at 3.

The Courts' Scheduling Order (Dkt. No. 121) requires Plaintiffs to submit their Rebuttal Expert Report on February 11, 2022, and the Parties had previously scheduled the deposition of Plaintiffs' Expert on February 14, 2022. Because of the knowledge of Plaintiffs' case gained by Mr. Lanterman during communications with the Plaintiffs, to allow Defendants to proceed with the case using Mr. Lanterman as their expert witness would be patently unfair and prejudicial to Plaintiffs. Plaintiffs intend to file a Motion to Disqualify Mr. Lanterman in short order.

### CONCLUSION

WHEREFORE, Plaintiffs request the Court stay expert related discovery until this situation is resolved to provide the Parties certainty as to the availability of Mr. Lanterman and his opinions.

DATED: February 9, 2022

Respectfully submitted,

By: /s/ David K. Wooten

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 9th day of February 2022, I consulted with counsel for Defendants, David Marcus, and we were unable to reach an agreement that would protect both sides interest while allowing expert discovery to continue under the current case schedule, while the Court resolves the Parties expert conflict dispute.

/s/ David K. Wooten  
***Attorney for Plaintiffs***

**CERTIFICATE OF SERVICE**

I hereby certify that on this 9th day of February 2022, the above and foregoing was filed electronically with the Clerk of the Court to be served by operation of the Court's ECF system upon the following:

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